United States Court of Appeals

for the Second Circuit

APPENDIX

75-5020

United States Court of Appeals

for the

SECOND CIRCUIT

B

P/s

IN THE MATTER

of

ISRAEL-BRITISH BANK (LONDON) LIMITED,

Bankrupt

ISRAEL-BRITISH BANK (LONDON) LIMITED,

Appellant,

FEDERAL DEPOSIT INSURANCE CORPORATION as successor in interest to Franklin National Bank and

BANK OF THE COMMONWEALTH,

Appellees.

On Appeal From the United States District Court
for the Southern District of New York

JOINT APPENDIX

KRAUSE HIRSCH & GROSS
Attorneys for Appellant
41 East 42nd Street
New York, New York 10017
(212) 986-1122

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Attorneys for Appellee Federal Deposit Insurance Corporation as successor in interest to Franklin National Bank
One Wall Street
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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

NAME OF BANKRUPT/DEBTOR (Last / First / Middle)	DIST. NO.	DIV NO.	DOCKET NO.
IN THE MATTER OF [illegible] - BRITISH BANK (LONDON) LIMITED.	93		74 B [illegible]

CHAPTER OR SECTION	CHECK IF	
		Voluntary
		Involuntary
DATE PETITION FILED: Sept. 23, 74		Fee paid in installments
		Corporation
DATE CLOSED	OCCUPATION (Check one)	Farmer
		Employee
DISCHARGE: Granted / Denied / Waived or not applied for		Professional
		Other (Non-business)
DATE DISCHARGED		Merchant
		Manufacturer
		Other (Business)

PETITION DISMISSED? ☐ YES	DATE DISMISSED	CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED

ADDRESS OF BANKRUPT/DEBTOR (Number and Street): Williams National Towne, 1171 Walborn Viaduct, London, [illegible], United Kingdom

CITY: Courts located | ZONE | COUNTY: in New York County | STATE

NAME OF JUDGE:

NAME OF REFEREE: Sam'l. Galgay

NO ASSET CASES ONLY — CLAIMS AS SCHEDULED	TOTAL	PRIORITY	SECURED	UNSECURED
	$	$	$	$

ATTORNEY FOR BANKRUPT OR DEBTOR	NAMES AND ADDRESSES: [illegible] & Gross, 41 East 42nd Street, New York, N.Y. 10017 Tel: (212) 986-1122.
ATTORNEY FOR PETITIONING CREDITORS	
RECEIVER	
ATTORNEY FOR RECEIVER	
TRUSTEE	
ATTORNEY FOR TRUSTEE	

CHANGES OF PRINCIPALS:

DATE	PROCEEDINGS
9/23/74	Filed Petition, and List of Creditors. Referred to Bankruptcy Judge Galgay.
10/15/74	Received from Bankruptcy J. AMENDED PETITION.sub. by: Krause, Hirsch and Gross, attys. for Petitioner, Dated: 10/1/74 from Bankruptcy J.
1/14/75	RED'D. NOTICE OF APPEAL of BANK OF THE COMMONWEALTH, a creditor from the order of Hon. Galgay, entered on: 12/19/74 denying the motion made by said Bank to dismiss the voluntary petition herein on the ground that the Court lacks jurisdiction to entertain the same.sub. by: Schwartz Burns Lesser and Jacoby, attorneys for Bank of the Commonwealth. Dated: 12/27/74. RET: FEBRUARY 25th, 1975 at 10:30 A.M. in Room No. 506. f.

CONTINUED ON PAGE 2.

FORM BK-74-D SEP. 1962 (7-70)

UNITED STATES DISTRICT COURTS

☐ CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT TIME OF FILING

BANKRUPTCY DOCKET — COPY

1/14/75 Filed DESIGNATION OF CONTENTS of record on appeal and statement of issues, pursuant to Bankruptcy rule 806.sub. by:Schwartz Burns Lesser and Jacoby,attys. for Appellant,Bank of the Commonwealth Dated:1/6/75. f.

1/14/75 Filed APPELLEE'S DESIGNATION of ADDITIONAL papers to be included in record on appeal,sub. by:Krause,Hirsch and Gross,attys.for Appellee,Israel-British Bank(London)Ltd.Dated:1/13/75. f.

1/14/75 RECEIVED NOTICE OF APPEAL from Bankruptcy J. of FRANKLIN NATIONAL BANK AND FEDERAL DEPOSIT INSURANCE CORP.from the order of Bankrupt J.GALGAY,entered on:12/19/74 dismissing the motions of Franklin National Bk and Bank of the Commonwealth to vacate the adjudication of bankruptcy made on the filing of the voluntary petition of Israel-British Bank and to dismiss the voluntary petition of Israel British Bank filed on:9/23/74.etc.sub. by:Cadwalader Wickersham and Taft,attorneys for Appellant-Movant,Dated:12/27/74. RET: FEBRUARY 25,1975 at 10:30 AM in Room 506. f.

1/14/75 Received from Bankruptcy J. DESIGNATION of RECORD and statement of issues on appeal,setc. sub. by:Cadwalader Wickersham and Taft, attorneys for Appellant,Dated:1/6/75. ;f.

1/14/75 Received from Bankruptcy J.DESIGNATION of ADDITIONAL papers;to be included in record on appeal,Sub. by:Kraise,Hirsch and Gross,attys for Appellee,Dated:1/13/75. f.

1/30/75 Filed MEMORANDUM OF LAW on behalf of BANK OF THE COMMONWEALTH a judgment creditor of Israel British Bank ...Bankruptcy J's. order denied appellant's motion for an order vacating and setting aside the adjudication of IBB as a bankrupt made on 9/23/74 & dismissing the vol. petition filed on itsbehalf that day,etc.sub. by: Schwartz Burns Lesser and Jacoby,attys. for Appellant,BANK OR THE COMMONWEALTH. f.

1/31/75 Filed BRIEF OF APPELLANT -FEDERAL DEPOSIT INS.CORP. as successor in interest to Franklin National Bank. ..appellant appeals from a decision of the Bankruptcy Court which denied the motion of Franklin National Bank to dismiss the vol. bankruptcy pet. of Israel British Bank and held that the court had jurisdiction to entertain the pet. because Israel Bank is not a banding corp etc.sub by:Cadwalader Wickersham and Taft,attys. for the Federal Deposit Ins. Co.f.

2/14/75 Filed MEMORANDUM of law of Appellee ISRAEL-BRITISH BANK in opposition to the appeals of FEDERAL DEPOSIT INSURANCE CORP.as successor in interest to Franklin National Bank and in support of the affirmance of the order of Bankruptcy J.Galgay,dated:12/19/74,that order denied appellants' motions for an order vacating and setting aside the adjudication of IBB as a bankrupt. sub. by:Krause,Hirsch and Gross,attorneys for Israel-British Bank.

CONTINUED ON PAGE NO. 3.

DOCKET NUMBER

DATE	PROCEEDINGS
2/20/75	Filed REPLY BRIEF of Appellant FEDERAL DEPOSIT INS.CORP., as successor in interest to Franklin National Bank to the Memorandum of Law of appellee Israel-British Bank,etc. sub. by:Cadealader,Wickersham and Taft,attys. for Appellan Dated:2/19/75. f.
2/21/75	Filed REPLY MEMORANDUM of law on behalf of BANK OF THE COMMONWEALTH for the dismissal of voluntary petition file for lack of jurisdiction,etc. and and for the reversal of Judge Galgay's order of 12/19/74.etc.sub. by:Schwartz, Burns,Lesser and Jacoby,attys for Appellant. f.
10/10/75	FiledOPINION # 43241, desiding that the decision of the Bankruptcy Court is reversed and the petition of Israel British Bank is Dismissed. So Ordered Lasker, J. dated 10/10/75. (Copy to Bank Judge). m/n/: KRAUSE HIRCH & GROSS, ESQS. 41 East 42nd Street, N.Y.N.Y. 10017, CADWALADER WICKERSHAM & TAFT. ESQS, 1 Wall St. N.Y.N.Y. 10005, & Schwartz, Burns Lesser & Jacoby, Esqs., 445 Par Avenue, N.Y.N.Y. 10022.
10/17/75	**Filed AMENDED OPINION # 43241. The first line on page 2 is amended to read "of the Bankruptcy Court which denied Franklin's and Commonwealth's motions to dismiss." So ordered Lasker, J. dated 10/15/75. (Copy to Bank Judge) m/n; KUAUSE HIRCH & GROSS. 41 East 42nd St. N.Y.N CADWALDER WICKERSHAM & TAFT. 1 Wall St. N.Y.N.Y. , Schwartz burns LESSER & JACOBY 445 Park Avenue N.Y.N.Y.**
11/7/75	**Filed NOTICE OF APPEAL to the USCA by Israel British Bank (London Ltd.) from the order entered on 10/10/75 by Hon M.E. Lasker USDJ, dismissing the petition in bankruptcy. Mailed Notices. f.**
12/18/74	**Filed Statement of Affairs and Schedules.**
11/26/75	**Filed Notice that the originial record was transferred to the USCA, on 11/26/75.**

12/15/75
MM

Original Petition in Bankruptcy Filed
September 23, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter

of

ISRAEL - BRITISH BANK (LONDON)
LIMITED,

Bankrupt.

In Bankruptcy
No. 74 B 1224

TO THE HONORABLE JUDGES OF THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK:

1. Petitioner is a corporation organized under the laws of the United Kingdom and engaged in the banking business with its post-office address at Williams National House, 11/13 Holborn Viaduct, London, E. C. 1., United Kingdom.

2. On August 2, 1974, pursuant to the Bankruptcy Act of the United Kingdom, petitioner voluntarily filed a debtor's petition for the winding up of its affairs with the High Court, Chancery Division of the United Kingdom.

3. On or about August 6, 1974, a receiving order was made by the High Court, Chancery Division of the United Kingdom, constituting Arthur Thomas Cheeck Senior Official Receiver, Receiver and Provisional Liquidator of the property of petitioner.

4. Petitioner has had its principal place of business and its principal assets at Williams National House, 11/13 Holborn Viaduct, London, E. C. 1., United Kingdom and has not had its principal place of business or its principal assets in this

District or any other District of the United States for the preceding 6 months or for a longer portion thereof. Petitioner has property in this District and by reason thereof this Court has jurisdiction to adjudicate Petitioner a bankrupt, pursuant to the provisions of §2a(1) of the Bankruptcy Act and Rule 116(a)(2)(B) of the Rules of Bankruptcy Procedure, effective October 1, 1973.

5. Petitioner is qualified to file this petition and is entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt.

WHEREFORE, Petitioner prays for relief as a voluntary bankrupt under the Act.

Dated: New York, New York
September 23, 1974

KRAUSE, HIRSCH & GROSS

By: _____
A Member of the Firm
Attorneys for Petitioner
41 East 42nd Street
New York, New York 10017
Telephone: (212) 986-1122

List of Creditors Annexed to Original Petition

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter

of

ISRAEL - BRITISH BANK (LONDON) LIMITED,

Bankrupt.

In Bankruptcy

No. 74 B ____

LIST OF CREDITORS

Creditor	Address
Mabro International Inc.	10 East 40th Street New York, New York 10016
Bank of America	37 Broad Street New York, New York 10004
Bank of America	11 Walbrook London EC4N 8EV
North Carolina National Bank	Princess House 93 Gresham Street London EC2
United California Bank	P. O. Box N3016 Nassau
United California Bank	Etaëo, Moorgate London EC2
United California Bank	140 Broadway New York, New York 10015
First Wisconsin Bank	34-41 New Broad Street London EC2
Franklin National Bank	Suite 4747, 1 World Trade Centre New York, New York 10048
Franklin National Bank	1 Old Jewry London EC2

List of Creditors Annexed to Original Petition

Creditor	Address
Bank of the Commonwealth	Commonwealth Buildings Michigan 4822
Merchants National Bank and Trust Company	International Division Indianapolis, Indiana 46204
Merchants National Bank and Trust Company	P. O. Box N4465 Nassau
Merril Lynch Bank	P. O. Box 410 1211 Geneva 11
Central National Bank of Cleveland	120 South La Salle Street Chicago, Illinois
Central National Bank of Cleveland	40 Wall Street New York, New York 10005
Central National Bank of Cleveland	800 Superior Avenue Cleveland, Ohio
Banca D'America E D'Italia	5 Via Manzani 20121 Milan
Girard Trust Bank	83-84 Queen Street London EC4
Harris Trust and Savings Bank	48 Gresham Street London EC2
Union Commerce Bank	P. O. Box N3016 Nassau
Union Commerce Bank	Etaeo, Moorgate London EC2
Union Commerce Bank	140 Broadway New York, New York 10015
A. Seltzer	1051 N. Gardner Street Los Angeles, California 90046
Mrs. Katz	C/P I.B.B TA

Statement of Assets Annexed to Original Petition

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter

of

ISRAEL - BRITISH BANK (LONDON) LIMITED,

Bankrupt.

In Bankruptcy

No. 74 ____

STATEMENT OF ASSETS

The assets of the bankrupt consist of deposits in the following banks:

Creditor	Address
Bank of America	New York, New York
Central National Bank	Chicago, Illinois
Bankers Trust Co.	New York, New York
Franklin National Bank	New York, New York
Mellon Bank International	New York, New York
Central National Bank of Cleveland	New York, New York

Amended Petition dated October 1, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter

of

ISRAEL-BRITISH BANK (LONDON) LIMITED

Bankrupt

In Bankruptcy
No. 74 B 1322
AMENDED PETITION

TO THE HONOURABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK:

1. Petitioner is a corporation organized under the laws of the United Kingdom and engaged in the banking business with its post-office address at Williams National House, 11/13 Holborn Viaduct, London, E.C.1., United Kingdom.

2. On August 2, 1974, pursuant to the Bankruptcy Act of the United Kingdom, petitioner voluntarily filed a debtor's petition for the winding up of its affairs with the High Court, Chancery Division of the United Kingdom.

3. On or about August 6, 1974, a receiving order was made by the High Court, Chancery Division of the United Kingdom, constituting Arthur Thomas Cheek, Senior Official Receiver, Receiver and Provisional Liquidator of the property of petitioner.

4. Petitioner has had its principal place of business and its principal assets at Williams National House, 11/13 Holborn Viaduct, London, E.C.1., United Kingdom and has not had its principal place of business or its principal assets in this District or any other District of the United States for the preceding 6 months or for a longer portion thereof. Petitioner has property in this District and by reason thereof this Court has jurisdiction to adjudicate Petitioner a bankrupt, pursuant to the provisions of

S§ 2a(1) of the Bankruptcy Act and Rule 116(a) (2) (B) of the Rules of Bankruptcy Procedure, effective October 1, 1973.

5. Petitioner is qualified to file this petition and is entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt.

WHEREFORE, Petitioner prays for relief as a voluntary bankrupt under the Act.

DATED: New York, New York
October 1, 1974.

KRAUSE, HIRSCH & GROSS

By:_____
A Member of the Firm
Attorneys for Petitioner
41 East 42nd Street
New York, New York, 10017
Telephone: (212) 986-1122

I, ARTHUR THOMAS CHEEK, Provisional Liquidator of the Corporation named as Petitioner in the foregoing Petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information and belief and that the filing of this Petition on behalf of the Corporation has been authorised.

Subscribed and sworn to
before me this 1st
day of October, 1974.

Nicholas R.R. Smith

Notary Public of London, England

Notice of Motion of Franklin National Bank dated September 26, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
of	:	In Bankruptcy 74 BKCY. 1322 (J.J.G.)
ISRAEL-BRITISH BANK (LONDON) LIMITED,	:	
Alleged Bankrupt.	:	NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the petition herein, the annexed affidavit of John J. Walsh sworn to September 26, 1974, upon the exhibits to such affidavit, upon the memorandum of law to be submitted herein, and upon all papers and proceedings herein, the undersigned on behalf of Franklin National Bank, a scheduled creditor herein, will move this Court before the Honorable John J. Galgay, Bankruptcy Judge, at Room 237, United States Courthouse, Foley Square, New York, New York, on October 15, 1974, at 10:30 A.M. or as soon thereafter as counsel may be heard, for an order pursuant to Rules 121, 712, 914, 915(b) and 928 of the Bankruptcy Rules and Rule 12(b) of the Federal Rules of Civil Procedure and all other applicable rules and principles of law:

(1) Vacating the adjudication of bankruptcy made herein on September 23, 1974 upon the filing of the voluntary bankruptcy petition of Israel-British Bank (London) Limited dated September 23, 1974 upon the ground that under the provisions of Section 4(a) of the Bankruptcy Act this Court lacks jurisdiction over the subject matter of this proceeding in that Israel-British Bank (London) Limited is a banking corporation;

(2) Dismissing the voluntary bankruptcy petition of Israel-British Bank (London) Limited dated September 23, 1974 upon the ground that this Court lacks jurisdiction over the subject matter of the proceeding; and

(3) Setting forth a schedule for the filing of briefs by the parties hereto;

(4) Granting Franklin National Bank such further relief as may be just.

Dated: New York, New York
September 26, 1974

CADWALADER, WICKERSHAM & TAFT

By: _____
A Member of the Firm

Attorneys for Franklin National Bank
One Wall Street
New York, New York 10005
Telephone No. (212) 785-1000

TO: KRAUSE, HIRSCH & GROSS
Attorneys for Petitioner
41 East 42nd Street
New York, New York 10017
Telephone No. (212) 986-1122

Affidavit of John J. Walsh Sworn to September 26, 1974 in Support of the Motion of Franklin National Bank

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Bankruptcy 74 BKCY. 1322 (J.J.G.)
of	:	
ISRAEL-BRITISH BANK (LONDON) LIMITED,	:	AFFIDAVIT
Alleged Bankrupt.	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN J. WALSH, being duly sworn says:

1. I am a member of the Bar of this Court and of Cadwalader, Wickersham & Taft, attorneys for Franklin National Bank ("Franklin"). I make this affidavit in support of Franklin's motion for an order pursuant to Rules 915(b) of the Bankruptcy Rules and Rule 12(b) of the Federal Rules of Civil Procedure vacating the adjudication of bankruptcy and dismissing the voluntary petition in bankruptcy dated September 23, 1974 filed by Petitioner Israel-British Bank (London) Limited ("Israel Bank"), the alleged bankrupt, upon the ground that under the provisions of Section 4(a) of the Bankruptcy Act this Court lacks jurisdiction over the subject matter of this proceeding.

2. Franklin is a national bank organized and existing under the laws of the United States of America and maintains its principal place of business in the State of New York. Israel Bank, the alleged bankrupt, is a banking corporation organized under the laws of the United Kingdom and has its principal place of business in London, England.

Franklin's interest in this proceeding arises out of Israel Bank's failure to repay to Franklin the principal and interest owing on a Eurodollar Loan made by Franklin to Israel Bank which was due and owing on July 11, 1974. Franklin has been listed by Israel Bank as one of its creditors in its petition herein.

3. On July 26, 1974 Franklin filed a complaint in the United States District Court for the Southern District of New York, 74 Civ. 3232 (KTD), seeking payment of the Eurodollar Loan and interest and on that same day obtained an Order of Attachment which it served on a number of institutions in New York City. Attached hereto as Exhibit A is a true copy of said Order of Attachment and the exhibits thereto, including an affidavit in support of the Application for an Order of Attachment. As appears from the affidavit in support of the Order of Attachment, on January 11, 1974, Franklin deposited with or loaned to Israel Bank $2,000,000 in Eurodollars to be repaid by Israel Bank on July 11, 1974, together with interest at 9-1/2% per annum. Although due demand was made upon Israel Bank for repayment of the $2,000,000 principal amount of the Eurodollar Loan or deposit and the agreed upon interest of $95,527.78, to date Israel Bank has failed and refused to repay said loan or deposit.

4. On the day when the answer of Israel Bank to Franklin's complaint was due, Franklin was informed by then counsel to Israel Bank, the firm of Cravath, Swaine & Moore, that Israel Bank would not answer, move or otherwise appear in Franklin's action and would instead file a voluntary

petition in bankruptcy. It appears that the reason why the instant proceeding was commenced was to stay Franklin's action and other actions against Israel Bank.

5. On the face of Israel Bank's petition, it is apparent that this Court lacks jurisdiction over the subject matter of this proceeding. In paragraph 1 of the petition it is alleged that Israel Bank is a banking corporation. Thus within the meaning of Section 4 of the Bankruptcy Act, 11 U.S.C. § 22, it is not entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt and this Court is without jurisdiction to adjudicate it as such.

6. No prior application has been made for the relief sought herein.

WHEREFORE, it is respectfully submitted that the petition herein be dismissed for lack of subject matter jurisdiction and the adjudication in bankruptcy vacated and Franklin be granted such further and other relief as may be just.

John J. Walsh

Sworn to before me this
26th day of September, 1974.

Notary Public

EILEEN S. FLORIDIA
Notary Public, State of New York
No. 31-4521970
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1976

Exhibit A to the Affidavit of John J. Walsh

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

FRANKLIN NATIONAL BANK, : 74 Civ. 3232 (K.T.D.)

Plaintiff, :

-against- : ORDER OF ATTACHMENT

ISRAEL-BRITISH BANK, (LONDON), LTD., :

Defendant. :

- - - - - - - - - - - - - - - - - - - x

Upon the annexed affidavit of Harry P. Barrand, the summons, the complaint, and all the prior proceedings had herein;

AND it appearing to the Court that a claim for a money judgment exists in favor of the plaintiff and against the defendant in the amount of $2,095,527.78, plus interest and costs, and that plaintiff appears to be entitled to recover that sum, that no counterclaims, set-offs, or defenses are known to it, that plaintiff is entitled to an Order of Attachment on the ground that defendant is a foreign corporation and this action is one in which plaintiff would be entitled to a money judgment, and that the undertaking required by law will be filed with the Clerk of this Court;

IT IS HEREBY ORDERED that the United States Marshal for the Southern District of New York, or any United States Marshal in the State of New York, levy within his jurisdiction, at any time before final judgment herein, upon such property in which the defendant has an interest, and upon the debts owing to the defendant, as will satisfy the plaintiff's demand of

1-B

EXHIBIT A

$2,095,527.78, together with interest, costs, and Marshal's fees and expenses, and that he proceed herein in the manner required by law.

IT IS FURTHER ORDERED that this order of attachment is conditioned upon the plaintiff filing an undertaking with the Clerk of this Court on or before July 30, 1974, and that said undertaking be, and hereby is fixed in the sum of $250,000 of which amount the sum of $240,000 is conditioned that plaintiff will pay to defendant all legal costs and damages which may be sustained by reason of the attachment if defendant recovers judgment or it is finally decided that plaintiff was not entitled to an attachment of the defendant's property, and the balance thereof, to wit the sum of $10,000 is conditioned that the plaintiff will pay to the U. S. Marshal all his allowable fees.

Dated: New York, New York
July 26, 1974

/s/ Kevin Thomas Duffy
U.S.D.J.

Exhibit A to the Affidavit of John J. Walsh

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

FRANKLIN NATIONAL BANK, Plaintiff,	:	74 Civ. 3232 (KTD)
-against-	:	AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER OF ATTACHMENT
ISRAEL-BRITISH BANK (LONDON) LTD., Defendant.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HARRY P. BARRAND, JR., being duly sworn, deposes and says:

1. I am Executive Vice-President in charge of the International Banking Department of Franklin National Bank ("Franklin"), plaintiff herein, and am fully familiar with the facts as hereinafter stated. I offer this affidavit in support of Franklin's application for an order of attachment against the property of, and any debts owing to, defendant Israel-British Bank (London), Ltd. ("Israel-British (London)").

2. This application is made pursuant to Rule 64 of the Federal Rules of Civil Procedure and Section 6211 of the New York Civil Practice Law and Rules, for an order directing the United States Marshal for the Southern District of New York to levy within his jurisdiction, at any time before final judgment, upon such property in which Israel-British (London) has an interest, and upon such debts owing to it as will satisfy Franklin's demand, together with probable interest, costs and

Marshal's fees and expenses. The grounds for this application are that this is an action for a money judgment against a defendant which is a foreign corporation and that the attachment will also provide this Court with quasi in rem jurisdiction.

3. A copy of the complaint is attached as Exhibit A. As is hereinafter more fully set forth, this is an action for damages for breach by Israel-British (London) of an agreement to repay to Franklin a loan in the amount of $2,000,000 plus interest.

4. The claim for relief herein arose out of the following facts and circumstances:

(a) Franklin is a banking institution, organized and existing under the laws of the United States of America, with its statutory place of business located at 189 Montague Street, Brooklyn, New York.

(b) Israel-British (London) is a foreign bank organized under the laws of England with its principal place of business located in London, England.

(c) A portion of Franklin's International business is the placement of "Eurodollar" loans with various overseas institutions. A "Eurodollar" loan is a transaction in which an overseas branch of Franklin loans a foreign bank a certain amount of United States dollars (called "Eurodollars") for a designated time period and at a designated interest rate.

(d) As indicated in Exhibit B hereof on January 11, 1974, Franklin loaned Israel-British (London) $2,000,000 in Eurodollars to be repaid by Israel-British (London) on or before July 11, 1974, together with interest at 9-1/2% per annum.

(e) To date the $2,000,000 principal of the loan and the agreed upon interest ($95,527.78) have not been repaid. In addition, since date of default, Israel-British (London) has become, and continues to become, further obligated for additional interest, computed on both the overdue principal and interest, on a daily basis, at a rate equal to Franklin's cost of funding the overdue principal and interest on the London inter-bank Eurodollar market, compounded daily.

5. In light of the absolute certainty of Israel-British (London)'s legal obligation to Franklin and in order to protect stockholders, depositors and creditors of Franklin, it is imperative that Franklin be permitted to attach whatever property it can locate belonging to Israel-British (London), and that this be done as expeditiously as possible. To my knowledge there exist no no counterclaims, set-offs or defenses which permit defendant to refuse to pay its above described obligation to Franklin.

6. Therefore, it is respectfully requested that an order of attachment be issued in the amount of $2,095,527.78, the amount (exclusive of further interest and costs) which is presently owing to Franklin by defendant, plus probable interest, costs, and Marshal's fees.

7. No prior application for this or any similar relief has heretofore been made to this or any other Court.

H. P. Barrand Jr.

Harry P. Barrand, Jr.

Sworn to before me this
26 day of July, 1974

John J. Witmeyer III

Notary Public

JOHN J. WITMEYER III
Notary Public, State of N.Y.
No. 31-4715225
Qualified in New York Co.
Commission Expires March 30, 1976

Exhibit A to the Affidavit of John J. Walsh

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

FRANKLIN NATIONAL BANK, Plaintiff,	:	74 Civ.
-against-	:	COMPLAINT
ISRAEL-BRITISH BANK (LONDON), LTD., Defendant.	:	

Plaintiff, Franklin National Bank, by its attorneys Mudge Rose Guthrie & Alexander, for its complaint herein, alleges:

1. Plaintiff Franklin National Bank ("Franklin") is a national bank organized and existing under the laws of the United States of America having its principal place of business in the State of New York.

2. Upon information and belief, Israel-British (London), Ltd. ("Israel-British (London)") is a British corporation having its principal place of business in London, England.

3. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.00.

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332(a)(2) by virtue of the citizenship of the parties and the amount in controversy.

Exhibit A to the Affidavit of John J. Walsh

5. On January 11, 1974, Franklin made a Eurodollar loan to defendant Israel-British (London) in the amount of two million ($2,000,000.00) dollars, to be repaid on or before July 11, 1974, with interest at the rate of 9-1/2% per annum.

6. That Eurodollar loan has now become due and demand for payment has been made, but, as of the date of this complaint, defendant Israel-British (London) has not repaid the loan or any part thereof and is in default.

7. As a result of its default, defendant Israel-British (London) is presently liable to Franklin for the amount of the loan ($2,000,000.00) with interest ($95,527.78), plus additional interest on both the overdue principal and interest. The amount of the additional interest is to be computed on a daily basis at a rate equal to Franklin's cost of funding the overdue principal and interest on the London interbank Eurodollar market, and is to be compounded daily.

WHEREFORE, Franklin National Bank demands judgment against Israel-British Bank (London), Ltd., granting to Franklin National Bank damages in the amount of $2,095,527.78 plus additional interest from July 11, 1974, together with costs and such further relief as may be just.

Dated: New York, New York
July 26, 1974

MUDGE ROSE GUTHRIE & ALEXANDER

By _____

Attorneys for Plaintiff
Franklin National Bank
20 Broad Street
New York, New York 10005
Tel.: (212) 422-6767

Exhibit A to the Affidavit of John J. Walsh

ISRAEL-BRITISH BANK (LONDON) LTD.
Williams National House,
11/13 Holborn Viaduct, London, EC1P 1EL

Cables: OLIMSANK. LONDON
Telex: 884765 (General) 887261 (Forex)
Telephone: 01-248 8070

FX/CH

To: Franklin National Bank,
1, Old Jewry,
London E.C.2.

Date: 10th January 1974

We confirm having accepted from you (through Phone) the 15 1974
following DEPOSIT payable to our account with :-

Hellon Bank International, New York.

by:—

Value:	Maturity:	Rate % p.a.	Amount:
11.1.74	11.7.74	9½	US$ 2,000,000.--

Special Instructions :

Interest Payable
US$ 95,527.78

For ISRAEL-BRITISH BANK (LONDON) LTD.

AX 9

Notice of Motion of Bank of the Commonwealth

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter -of- ISRAEL BRITISH BANK (LONDON) LIMITED, Alleged Bankrupt.	In Bankruptcy 74 BKCY. 1322 (J.J.G.) NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the unverified voluntary petition in bankruptcy filed herein for the Israel-British Bank (London) Limited, the alleged bankrupt herein on or about September 23, 1974, the annexed affidavit of HERBERT P. JACOBY verified on October ✓ , 1974, together with the exhibits annexed thereto, and upon all of the papers and proceedings heretofore had herein, the undersigned on behalf of the Bank of the Commonwealth, a scheduled judgment creditor of the alleged bankrupt, will move this Court before the Honorable John J. Galgay, Bankruptcy Judge at Room 237, United States Courthouse, Foley Square, New York, New York, on October 22, 1974, at 2:30 P.M. or as soon thereafter as counsel may be heard, for an order pursuant to the Bankruptcy Rules and Rule 12(b) of the Federal Rules of Civil Procedure:

(1) Vacating and setting aside the adjudication of bankruptcy of Israel-British Bank (London) Limited made herein on September 23, 1974 upon the filing of the alleged voluntary petition in bankruptcy on behalf of the said Israel-British Bank

(London) Limited, dated September 23, 1974, upon the ground that under the provisions of Section 4(a) of the Bankruptcy Act this Court lacks jurisdiction over the subject matter of this proceeding since the said Israel-British Bank (London) Limited is concededly a banking corporation and not entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt; and

(2) Dismissing the alleged voluntary petition in bankruptcy of the Israel-British Bank (London) Limited, dated September 23, 1974 on the ground that under the provisions of Section 4(a) of the Bankruptcy Act this Court lacks jurisdiction over the subject matter of this proceeding and the said alleged petition in bankruptcy fails to state a claim upon which relief can be granted; and

(3) For such other further and different relief as to this Court may appear to be just and proper.

Dated: New York, New York
October ✓, 1974

SCHWARTZ, BURNS, LESSER & JACOBY

By: Herbert P. Jacoby
HERBERT P. JACOBY

Attorneys for Bank of the Commonwealth
445 Park Avenue
New York, New York
Tel. No. 980-3200

TO: KRAUSE, HIRSCH & GROSS
Attorneys for Petitioner
41 East 42nd Street
New York, New York 10017
Tel. No. 986-1122

Affidavit of Herbert P. Jacoby Sworn to October 2, 1974 in Support of the Motion of Bank of the Commonwealth

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter -of- ISRAEL-BRITISH BANK (LONDON) LIMITED, Alleged Bankrupt.	In Bankruptcy 74 BKCY. 1322 AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

HERBERT P. JACOBY, being duly sworn, deposes and says:

(1) I am a member of the firm of SCHWARTZ, BURNS, LESSER & JACOBY, attorneys for BANK OF THE COMMONWEALTH, a banking corporation organized and existing under the laws of the State of Michigan, and a judgment creditor of ISRAEL-BRITISH BANK (LONDON) LIMITED (hereinafter referred to as the "British Bank"), the alleged bankrupt herein. The British Bank is a banking corporation organized and existing under the laws of the United Kingdom and maintains its principal place of business in London, England.

(2) This affidavit is submitted in support of the motion by Bank of the Commonwealth pursuant to the Bankruptcy Rules and Rule 12(b) of the Federal Rules of Civil Procedure for an order vacating and setting aside the adjudication of bankruptcy of the British Bank made on September 23, 1974 upon the filing in this Court of an unverified voluntary petition in bankruptcy on

behalf of the British Bank by its New York attorneys and for an order dismissing the alleged voluntary petition in bankruptcy dated September 23, 1974. The within motion is made upon the ground that pursuant to Section 4(a) of the Bankruptcy Act the British Bank, concededly a banking corporation as such a corporation is defined under that Section, is not entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt and that the alleged voluntary petition filed herein fails to state a claim upon which relief can be granted.

(3) On April 16, 1974 Bank of the Commonwealth loaned to the British Bank U.S. $500,000 payable on July 15, 1974 with interest at the prime rate charged from time to time by Bank of the Commonwealth plus one (1%) percent. On July 22, 1974 when the said loan remained unpaid Bank of the Commonwealth commenced an action in this Court (Docket No. 74 Civ. 3101 CTG) for the recovery of the monies loaned together with interest due thereon and on the same day obtained an order of attachment in the sum of $515,385.42, together with probable interest thereon. Annexed hereto and made a part hereof as Exhibit A is a true copy of said order of attachment, which was duly served on a number of garnishees and attachments made thereunder.

(4) Personal service of the summons and complaint was made upon the British Bank in London on August 6, 1974. When the British Bank failed to appear or answer Bank of the Commonwealth obtained a judgment in this Court against the British Bank in the sum of $519,923.90, which judgment was duly entered in this Court on September 11, 1974. Annexed hereto and made a part hereof as Exhibit B is a true copy of said judgment.

(5) Prior to September 23, 1974 pursuant to an execution issued on behalf of Bank of the Commonwealth a Deputy United States Marshal levied on the assets of the British Bank previously attached. Before Bank of the Commonwealth could compel the payment of the monies levied on by the United States Marshal, the voluntary petition in bankruptcy was filed in this Court on behalf of the British Bank. In the schedules filed together with the petition Bank of the Commonwealth was listed as a creditor. As a result of said filing Bank of the Commonwealth has been barred from collecting monies due it or from taking any other proceedings to realize on its judgment.

(6) The petition filed on behalf of the British Bank recites that petitioner has property in this District and that pursuant to the provisions of Section 2(a)(1) of the Bankruptcy Act and Rule 116 (a)(2)(b) of the Bankruptcy Rules, this Court has jurisdiction to adjudicate the petitioner a bankrupt. The cited provisions of the Bankruptcy Act permit the adjudication in bankruptcy of persons who do not have their principal place of business, residence or domicile within the United States of America, provided such persons have assets within this District. That petition also recites that the British Bank is a banking corporation and it has been conceded by counsel representing the British Bank that it is a banking corporation as such a corporation is defined under Section 4(a) of the Bankruptcy Act. Section 4(a) of the Bankruptcy Act expressly excludes from the benefits of the Act "a banking corporation". Accordingly,this Court does not have subject matter jurisdiction to entertain the petition filed herein and consequently the adjudication in bankruptcy of the British Bank should be vacated and the petition in all respects

dismissed.

WHEREFORE, it is respectfully requested that the within motion for an order vacating and setting aside the adjudication of bankruptcy of the British Bank and dismissing the petition in bankruptcy on the ground that this Court lacks jurisdiction over the subject matter of this proceeding and on the further ground that the alleged petition fails to state a claim upon which relief can be granted be in all respects granted.

Herbert P. Jacoby

HERBERT P. JACOBY

Sworn to before me this
2d day of October, 1974.

George J. Bove Jr.

Notary Public

GEORGE J. BOVE, JR.
Notary Public, State of New York
No. 24-0367500
Qualified in Kings County
Commission Expires March 30, 1975

Exhibit A to Affidavit of Herbert P. Jacoby

BLANK DIVIDER SHEET

EXHIBIT "A"

Exhibit A to Affidavit of Herbert P. Jacoby

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

BANK OF THE COMMONWEALTH, : Index No. 74 Civ. 4

Plaintiff, : TPG

-against- : ORDER OF ATTACHMENT

ISRAEL-BRITISH BANK (LONDON) LIMITED, :

Defendant. :

----------X

Upon reading and filing the Summons and Complaint herein and the Affidavits of Herbert P. Jacoby and Faiz K. Faris duly sworn to on July 19, 1974 wherein it appears that a cause of action for a money judgment exists in favor of plaintiff against defendant for the sum stated in the Complaint and in the aforesaid Affidavits, namely $515,385.42 with interest thereon from July 15, 1974, and that plaintiff is entitled to recover such sum over and above all counterclaims by defendant known to it; and

It being further shown by the aforesaid Affidavits that plaintiff is entitled to an Order of Attachment against the property of defendant on the ground that (a) the claim is one to recover monies loaned, and (b) defendant Israel-British Bank (London) Limited is a corporation no organized or existing unde the laws of the State of New York, and the undertaking required by law ~~having been~~ will be submitted herewith; it is

ORDERED that the United States Marshal in the Southern District of New York levy, within his jurisdiction, at any time before final judgment, upon such property and assets of and debt owing to defendant as will satisfy the plaintiff's demand of $515,385.42, together with probable interest, costs and the

Exhibit A to Affidavit of Herbert P. Jacoby

Marshal's fees and expenses, and that he proceed hereon in a manner required by law; and it is further

ORDERED, that the plaintiff's undertaking be, and the same hereby is, fixed in the sum of $52,000, which amount the sum of $47,000 is conditioned that plaintiff will pay to defendant all legal costs and damages which may be sustained by reason of the attachment if defendant recovers judgment or it is finally decided that plaintiff was not entitled to an attachment of defendant's property, and the balance thereof IN THE SUM OF U.S. $5,000 conditioned that the plaintiff will pay to the U.S. Marshal all his allowable fees.

TPG

TPG

TPG

Dated: New York, New York
July 22, 1974

Thomas P. Griesa
U.S.D.J.

Exhibit B to Affidavit of Herbert P. Jacoby

BLANK DIVIDER SHEET

EXHIBIT "B"

Exhibit B to Affidavit of Herbert P. Jacoby

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BANK OF THE COMMONWEALTH,

Plaintiff,

-against-

ISRAEL-BRITISH BANK (LONDON) LIMITED,

Defendant.

Index No. 74 Civ. 3101
T.P.G.

JUDGMENT

#74,734

The defendant, Israel-British Bank (London) Limited, having failed to plead or otherwise defend in this action and its default having been entered,

Now, upon application of the plaintiff and upon affidavit that defendant is indebted to plaintiff in the sum of $515,385.42, and that the defendant has been defaulted for failure to appear and that defendant is not an infant or incompetent person, and is not in the military service of the United States, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff recover of defendant the sum of $515,385.42 with interest thereon at the rate of 6% per annum from the fifteenth day of July, 1974 in the sum of $4,490.16 together with costs in the amount of $48.32 amounting in all to the sum of $519,923.90.

Dated, New York, N.Y.
September 9th 1974

Thomas P. Griesa
U.S.D.J.

JUDGMENT ENTERED - 9/11/74
Raymond F. Burghardt
CLERK

Affidavit of Arthur Thomas Cheek Sworn to November 13, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

ISRAEL-BRITISH BANK (LONDON) LIMITED,

Bankrupt

In Bankruptcy
No. 74 F 1322

I, ARTHUR THOMAS CHEEK, of Atlantic House, Holborn Viaduct, London EC1N 2HD, England, Senior Official Receiver and Provisional Liquidator of Israel-British Bank (London) Limited ("the Bankrupt") do hereby swear that to the best of my knowledge information and belief the Bankrupt:-

(a) Never had a place of business in the United States of America.

(b) Never qualified to do business as a Banking Corporation in the United States of America.

(c) Is not subject to the jurisdiction of any Banking Authority whether national or of any State of the United States of America.

Subscribed and sworn to
before me this 13th
day of November, 1974.

R.J. SCANDALL

Notary Public of London, England

Opinion of Honorable John J. Galgay, Bankruptcy Judge
dated December 19, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Bankruptcy
-of-	:	No. 74 B 1322
ISRAEL-BRITISH BANK (LONDON) LIMITED,	:	OPINION
Bankrupt.	:	

APPEARANCES

CADWALADER, WICKERSHAM & TAFT, ESQS.
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BY: John J. Walsh, Esq.

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Attys for Bank of the Commonwealth
BY: Herbert P. Jacoby, Esq.
Allan A. Pines, Esq.

KRAUSE, HIRSCH & GROSS, ESQS.
41 East 42nd Street
New York, N. Y. 10017
Attys for Bankrupt
BY: Jack Gross, Esq.
Sheldon Lowe, Esq.

JOHN J. GALGAY - Bankruptcy Judge

On September 23, 1974, a voluntary bankruptcy petition was filed in this court on behalf of Israel British Bank (London) Ltd (IBB) and on the same date it was adjudicated a bankrupt. An amended petition dated October 1, 1974 was filed on October 10, 1974, containing identical allegations as those in the original petition, the only difference being that the amended petition contained the verification of the Provisional Liquidator of Bankruptcy proceeding commenced in the United Kingdom on August 2, 1974.

On September 26, 1974, Franklin National Bank and the Bank of the Commonwealth filed motions to vacate the adjudication of bankruptcy made upon the filing of the voluntary petition of IBB and to dismiss the voluntary petition of IBB filed on September 23, 1974 upon the ground that this court lacks jurisdiction over the subject matter of the proceedings under the provisions of Section 4a of the Bankruptcy Act.

A conference on scheduling and briefing was held by this court on September 30, 1974. Briefs were submitted

by all parties prior to oral argument on the aforesaid motions and the arguments were heard on October 22, 1974.

On the papers submitted and on oral argument, two questions are presented.

1) Do lien creditors who obtained their liens by attachment against the property of the bankrupt within four months of the filing of a voluntary petition have standing to contest such petition?

2) Does the exclusion of a "banking corporation" in Section 4 of the Bankruptcy Act extend to a foreign banking corporation?

BACKGROUND

According to Franklin's papers its interest in this proceedings arises out of IBB's failure to repay on July 11, 1974 the principal and interest of more than $2,100,000 owing on a Euro-dollar loan or deposit made to it by Franklin. On July 26, 1974, Franklin filed a complaint in the United States District Court for the Southern District of New York captioned FRANKLIN NATIONAL BANK v. ISRAEL-BRITISH BANK (LONDON) LTD, 74 Civ 3232, seeking payment of this Euro-dollar deposit.

On the same date Franklin obtained an Order of Attachment which was served on a number of banking institu-

tions in New York City in connection with its suit. IBB failed to plead in Franklin's suit and was in default prior to the filing of its petition herein. Franklin however has been stayed from proceeding to judgment and execution by the filing of IBB's petition.

According to the papers submitted by Bank of the Commonwealth, a banking corporation organized and existing under the laws of the State of Michigan, it loaned IBB $500,000 U. S. Dollars on April 16, 1974, payable on July 15, 1974 with interest at the prime rate plus 1%. On July 22, 1974 when the loan remained unpaid, it commenced an action in the United States District Court, Southern District of New York, Docket No. 74 Civ 3101 (CTG) for the recovery of money loaned plus interest. On the same day it obtained an Order of Attachment in the sum of $515,385.42 plus proable interest. The Order of Attachment was served on a number of garnishees and attachments made thereunder.

On August 6, 1974 personal service of Summons & Complaint was made on IBB in London and affidavits of service filed in this court. Upon the failure of the IBB to appear or answer, the Bank of the Commonwealth obtained a

judgment in the sum of $519,923.90 which was entered in this court on September 11, 1974. Execution was levied by a deputy U. S. Marshal on assets of IBB previously attached. However, before the Bank of Commonwealth could compel payment of the monies levied upon, IBB filed its unverified voluntary petition in bankruptcy on September 23, 1974.

Against this background, the motions of Franklin and Commonwealth were filed and the two questions previously noted arise.

FACTS

IBB is a corporation organized under the laws of the United Kingdom and engaged in the banking business with its principal offices in the United Kingdom.

On August 2, 1974, pursuant to the Bankruptcy Act of the United Kingdom, petitioner voluntarily filed a debtor's petition for the winding up of its affairs with the High Court, Chancery Division of the United Kingdom.

On or about August 6, 1974, a receiving order was made by the High Court, Chancery Division of the United Kingdom, constituting Arthur Thomas Cheek, Senior Official Receiver, Receiver and Provisional Liquidator of the property of petitioner.

Petitioner has had its principal place of business and its principal assets in London, United Kingdom, and has never had any place of business or its principal assets in this District or any other District of the United States for the preceding six months or for longer portion thereof.

Petitioner has property in this District in the form of deposits of money held by five banks in New York City.

Counsel for petitioner has represented to this court that petitioner never did business in the United States, never was licensed to do business in the United States, never qualified to do business in the United States, never had an office in the United States and never had an agent in the United States. These representations are uncontroverted by the moving parties.

Neither of the moving parties has made a motion to intervene pursuant to Rule 24, F.R.Civ.P., Bankruptcy Rule 724 and Bankruptcy Rule 121 and the court has made no order previous hereto permitting intervention.

As to the first issue raised in the proceeding, i.e., whether or not creditors have standing to contest

the adjudication following the filing of the petition and to move to dismiss the same, this court decided at the oral argument that Franklin and Commonwealth had such standing. It is true that the statute does not speak directly to this issue, however, the cases make it clear that creditors have such standing in the very limited areas which involve fraud or a challenge to the subject matter jurisdiction of the court. Chicago Bank of Commerce v. Carter, 61 F.2nd 986 (8th Cir 1932). In re: Ettinger, 76 F.2nd 741 (8th Cir 1935); Mulligan v. Federal Land Bank of Omaha, 129 F.2nd 438.

Should there be error in that conclusion, the court has the right to raise the question of subject matter jurisdiction sua sponte and for the purpose briefing and arguing the questions, it can request the creditors to appear as amicus curiae, In re: Ettinger (supra).

Franklin and Commonwealth each challenged the court's subject matter jurisdiction and out of caution, the court acting sua sponte, invited them to argue the question as amicus curiae

As to the second issue, IBB has property within the jurisdiction of this court. It is a foreign banking corporation that has not qualified to do business in the

United States or in any of the states thereof and never had a place of business therein.

It appears from the foregoing that Section 2a(1) of the Bankruptcy Act and Rule 16a(2)(b) of the Rules of Bankruptcy Procedure vests this court with jurisdiction over IBB provided the proper person invoked the jurisdiction of the court and further, provided that it does not come within the exception of "banking corporation" contained in Section 4a of the Bankruptcy Act.

Counsel for the petitioner has submitted what he contends to be the authority under the law of the United Kingdom to the effect that the Provisional Liquidator in the British proceedings has authority to act for the corporation in filing the voluntary petition in this District. He further volunteered that if it became necessary, ratification by the Board of Directors of the IBB could be obtained to obviate any question of authority to file the petition under In re: Jefferson Casket Co. which relates to general corporation law of the State of New York - 25 ABR 663. He submitted the exchange of telegrams reciting this court's question to him regarding the authority to file the instant voluntary proceeding and the British

counsel's reply. There was also submitted the Order of the High Court of Justice, Chancery Division, Companies Court appointing one of the official Receivers attached to the court to be Provisional Liquidator of IBB dated August 6, 1974. Also submitted was an Order of the same court entitled "Leave to Employ Attorneys" dated October 9, 1974. That order authorized the employment of Krause, Hirsch & Gross of New York "to act for said company (IBB) and to investigate and report to the Official Receiver - - - and to take such steps and to institute such proceedings including the filing of a bankruptcy petition against the company as they may advise and as the said Official Receiver may authorize them to take to insure that the assets of the said company situate in the United States of America become available for the benefit of creditors general". Copies of this material were furnished to the moving parties and remains uncontroverted.

On the basis of the record before me I am satisfied that the filing of this voluntary petition is properly authorized by the Court in the United Kingdom.

I conclude as a matter of law that IBB as a foreign banking corporation that had not qualified to do

business in the United States or in any state therein, and that never had a place of business there, is not exempted from and is entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt.

In reaching this conclusion reference to legislative and statutory history is necessary and relevant in determining the meaning of the language of Section 4a in the present Act. Boston Sand & Gravel v. United States, 278 U.S. 41 (1928). Simply put, the question is, did Congress intend to include within the exception of "banking corporation" in that section, foreign banking corporations as well as domestic banking corporations.

This court is persuaded that the legislative history supports the conclusion that Congress intended to exclude from the scope of the Act only national banking corporations and banking corporations created under state or territoral laws and therefore foreign banking corporation in the position of the petitioner are not excepted from the Act.

The legislative history of the Bankruptcy Act of 1898 and the modifications of Section 4 thereof in 1903 and 1910 demonstrates that Congress intended to except from

Section 4 only those entities whose insolvency was covered by specific Federal and State law. This exclusion applies to "municipal, railroad, insurance or banking corporations." However, foreign banking corporations which are not subject to specific State and Federal banking laws, are not among the excluded categories. An examination of congressional intent through the history of the words of the exception to Section 4 supports the view that the exclusion from Section 4 applies only to domestic corporations

Section 4(b) of the Act of 1898 specifically excluded "national banks or banks incorporated under State or Territorial Laws" from the benefits of filing an involuntary petition. (Public Law 171, 55th Cong., 30 Stat. L. 544, Chap. 541). During the debate over the amendments of 1903, Congress refrained from re-examining its exception of national, state and territorial banks. (36 Cong. Rec. 1035, 57th Cong. 2nd Sess. (1903). However, in 1910, when Congress redrafted Section 4, allowing corporations to file a voluntary petition in bankruptcy under Section 4a, the exception, to both 4a and 4b was restated to read, "except municipal, railroad, insurance or banking corporation[s]". This change in language as stated by the sponsor of the

amendment "did not, in that particular case, change the law at all". (Statement of Congressman Sherley in hearing before sub-committee No. 1 of the Committee on the Judicary in H.R. 18694 (Bankruptcy) February 3, 1910 at 4). Thus, it can be concluded, that the exclusion of banking corporations remain limited to national, state and territorial banks as before. The 1910 amendment does not imply an extension of the exclusion to foreign banking corporations. The exception to Section 4 is based on two factors. First, the entities excluded are public or quaisi-public in nature and are clearly affected by a public interest. Secondly, there are specific provisions in either federal or state laws for the liquidation of such entities outside of the Bankruptcy Act. See statement of Sen. William Lindsay, 30 Cong. Rec. 602, 606, 55th Cong. 1st Sess. (1897) and the statement of Congressman Bodine on the United States Senate Floor, 31 Cong. Rec. 1939, 55th Cong. 2nd Sess (1898). The Conference Committee Report, 31 Cong. Rec. 6426, 55th Cong. demonstrates congressional purpose.

"The local railroad and transportation companies and banks incorporated under any law are left to be dealt with by the laws of the State creating them"

When dealing with an exception to a statute, it is a basic rule of construction that such exemption or exception be narrowly construed. Korherr v. Buml 262 F.2nd 157, 162 (9th Cir 1958); Midland Cooperative Wholesale v. Ickes 125 F.2nd 618, 626 (8th Cir 1942). Previous judicial constructions of Section 4 narrowly construed exclusions from jurisdictions under the Bankruptcy Act. In re: Bay Cities Guaranty Bldg. & Loan Association, 48 F.2nd 623, 624 (S D Calif 1931).

The case law supports the conclusion that only national and state banking corporations and not foreign banking corporations come within the exclusion of the Bankruptcy Act. Those cases contain statements by the courts expressing what they considered to be Congress's intention in excluding certain corporations from bankruptcy as well as Congressional intent in amending the Act in 1910. In re: Supreme Lodge of the Mason's Annuity, 286 F. 180, 184, (N.D. Ga 1923), cited with approval by the Fourth Circuit in Sims v. Fidelity Assurance Assn., 129 F.2d 442, 448 (4th Cir 1942) aff'd 318 U. S. 607 (1943).

The following quote from Woolsey et al. v. Security Trust Company et al. 74 F.2nd 334, 337 (5th Cir 1934) contained in petitioner's proposed findings and conclusion is

particularly expressive of the reasons for the exclusions under Section 4 and the choas and confusion which is avoided by the operation of such exclusion.

"The letter of that section excludes banking and insurance corporations; its spirit and purpose, to leave the liquidation of the banking corporations of the country to the well-organized departments of the states and the nation, organized for the puspose of supervising while they are going concerns and of liquidating them when they are not, excludes them. Federal laws provide elaborately for the supervision and liquidation of national banking corporations; the laws of the states do the same for state banks and insurance companies, in order to protect the millions of persons who deal with them on the faith of the protection afforded by direct governmental supervision and control. It was considered that it would be a ruinous thing to the state, to the depositors, and to the creditors to have the elaborate scheme of liquidation which the state provides broken into and nullified by bankruptcy proceedings, and it was intended by withdrawing jurisdiction over these corporations from the bankruptcy court, that this would not occur. It would be directly contrary to the purposes so definitely and comprehensively expressed to exempt banking corporations from the act, leaving their administration and liquidation to the state and federal systems devised expressly for them, to hold that this bank and trust company is not exempt, chartered though it was under the state banking laws, with banking privileges and powers, operated though it was under those laws, and not being liquidated as it is, under them."

Foreign banking corporations not doing business in the United States are not subject to Federal or State supervision while they are going concerns and there is no regulatory agency in the United States to govern their liqui-

dation hence they should be and are subject to the benefits of, the Bankruptcy Act.

The scant writings in legal periodicals on this subject also seem to support the view Congress intended to exclude only national and state banking corporations and not foreign banking corporations.

"Journal of the National Association of Referees in Bankruptcy" (Vol 36, No. 2, 1962) by Charles Seligson and Lawrence P. King; "Revision of Conflicts Provisions in the American Bankruptcy Act", 1 National and Comparative Law Quarterly (4th Ser.) 483 (1952) London, England, reprinted in Journal of National Association of Referees in Bankruptcy (Vol 27, No. 2) April 1953, under title "Revision of Conflicts Provisions in the American Bankruptcy Act." by Kurt H. Nadelmann.

The objectives of the Bankruptcy Act include a design to bring about an equitable division of the bankrupt's assets among its creditors and conversely to protect against one creditor obtaining unfair advantage over other creditors. Sampsell v. Imperial Paper & Color Corp. 313 U.S. 215, 219 (1941) 3 Colliers (14th Ed) §60.01 Pg 743.

Congress has provided a trustee in Bankruptcy through the Bankruptcy Act, a variety of remedies to accomplish the objective of equitable distribution among creditors as the Act related to individuals, partnerships and corporations. However, it excluded from that coverage those entities including "banking corporations" which would be liquidated under the supervision of experts in the banking field as provided by Federal laws governing national banks and State law for state banks.

As stated previously this alternative regulatory device for liquidation is not available in the case of a foreign banking corporation not doing business in the United States. The effect of finding that the petitioner is within the jurisdiction of this court is to support the Congressional objective of equality of distribution and allow the trustee herein to examine the merits of the movants claims, judgments and liens and move, if necessary, within the framework of the Act to insure such equality among creditors.

The motions to dismiss the voluntary petition is denied in all respects.

SO ORDERED.

DATED: NEW YORK, N. Y.
December 19th, 1974

Bankruptcy Judge

Opinion No. 43241 of Honorable Morris E. Lasker, United States District Judge dated October 10, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

In the Matter

of 74 Bkcy. 1332

ISRAEL-BRITISH BANK (LONDON) LIMITED, MEMORANDUM

Bankrupt.

----------X

APPEARANCES:

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Of Counsel: JACK GROSS, ESQ.
SHELDON LOWE, ESQ.
G. OLIVER KOPPELL, ESQ.

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Attorneys for Federal Deposit Insurance Corporation
as successor in interest to Franklin National Bank
Of Counsel: JOHN J. WALSH, ESQ.
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Opinion No. 43241 of Honorable Morris E. Lasker, United States District Judge dated October 10, 1975

LASKER, D.J.

This bankruptcy appeal raises an issue of first impression, which is of great significance to the international banking community. The economic interdependence among nations and the role of international banking in national and international affairs has evolved dramatically in this century. It is therefore understandable that when Congress in 1898 and 1910 specified in §4 of the Bankruptcy Act who may and may not be adjudicated a bankrupt, it did not specifically address the question before us: Does the Bankruptcy Court have jurisdiction to entertain a foreign banking corporation's voluntary petition in bankruptcy?

Despite the seeming simplicity of the issue, the question is thorny. As Justice Cardozo shrewdly observed, judicial construction of statutory language presents "a choice between uncertainties." Like Cardozo, "[w]e must be content to choose the lesser." Burnet v. Guggenheim, 288 U.S. 280, 288 (1933).

I.

The Facts

On September 23, 1974 a voluntary petition in bankruptcy was filed on behalf of Israel British Bank (IBB) and on the same day it was adjudicated a bankrupt.[1/] The Bank of the Commonwealth (Commonwealth) and the Federal Deposit Insurance Corporation (FDIC) as successor in interest to Franklin National Bank (Franklin) appeal from the decision

of the Bankruptcy Court which denied Franklin's *motion to dismiss IBB's petition and sustained the court's jurisdiction over IBB.

IBB is a corporation organized under the laws of the United Kingdom and formerly engaged in banking business with its principal place of business in London. It has never had a place of business, office or agent in the United States; has never been qualified to do business here; and never has done business in this country as a bank. IBB's property in this judicial district consists of deposits in various banks totalling several million dollars. On August 2, 1974, IBB filed a debtor's petition in Great Britain for the winding up of its affairs. Approximately four days later a Provisional Liquidator was appointed to safeguard the bank's property, and on December 2, 1974, the High Court, Chancery Division, of the United Kingdom approved IBB's petition and ordered the winding up of its affairs.

Appellants, FDIC and Commonwealth, are lien creditors of IBB in the amounts of $2,000,000. and $500,000. respectively. Both liens were perfected within four months of the filing of IBB's petition here. Consequently, if IBB is adjudicated a bankrupt under the Bankruptcy Act, a trustee in bankruptcy has the power to void those liens pursuant to §67(a) of the Act, 11 U.S.C. §107(a).

*[See Amended Opinion of Lasker, D.J. dated October 15, 1975 at page A-90.]

II.

The Statute

Section 4 of the present Bankruptcy Act, 11 U.S.C. §22, provides in relevant part:

> "§22. Who may become bankrupts
>
> (a) Any person, except a municipal, railroad, insurance, or banking corporation or a building and loan association, shall be entitled to the benefits of this title as a voluntary bankrupt.
>
> (b) Any natural person, except a wage earner or farmer, and any moneyed, business, or commercial corporation, excepting a building and loan association, a municipal, railroad, insurance, or banking corporation, owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial and shall be subject to the provisions and entitled to the benefits of this title." (Emphasis added).

According to §4(a), any person can file a petition as a voluntary petition except certain corporation, including "banking corporations." If IBB falls within the definition of "banking corporations" it may not file a petition; conversely, if the exception does not apply, it may enjoy the benefits of the Act.

In the decision below, Judge Galgay concluded that as a matter of law the term "banking corporation" in §4(a) does not encompass foreign banks which have no business connection with the United States other than the location of

assets here, and that the scope of the exception covers only "national banking corporations and banking corporations created under state and territorial laws." He held that IBB fell outside the scope of the exceptions to §4(a) and accordingly could be adjudicated a voluntary bankrupt.

Contrary to the position adopted by the Bankruptcy Court and urged by IBB, FDIC and Commonwealth argue that (1) the legislative history of the Act fails to support the limitation of the exception to domestic banking corporations; (2) application of the exclusion to foreign banks does not frustrate the purposes underlying the "banking corporation" exception; and (3) the court is without power to modify an unqualified exception for "banking corporations" to cover only domestic banks.

III.

The Ambiguity of a Clear Statute

Although the parties devote considerable attention in their briefs to the legislative history of §4, each side asserts that a mere reading of the statute immediately compels judgment in its favor.

Quite simply, IBB argues that while it was undeniably a bank in Great Britain, it was also quite definitely not a "bank" as such anywhere in the United States, and therefore does not fall within the "banking corporation" exception of §4(a). The argument does not wash. There is no provision in

the Act which states that a foreign corporation must operate as a bank within the United States in order either to enjoy the benefits of bankruptcy or to fit within the Act's exceptions, and of course the courts cannot write such a requirement into the Act. The corporations listed in §4(a) -- both those that may be adjudged a bankrupt and those that may not -- are described only with reference to the character of the entities, not to the extent, if any, of actual operation. It would be one thing if IBB had never operated as a bank anywhere. But since its corporate activities have indisputedly been in general those of a bank, it cannot avoid being so defined.

Another section of the Bankruptcy Act highlights the fact that the actual business of a corporation in the United States is unimportant for jurisdictional purposes. According to §2 of the Act, the Bankruptcy Court has jurisdiction as a general matter over foreign persons and corporations solely on the basis of their having property located in the United States. 11 U.S.C. §11a(1). The presence of assets -- not the corporate activities within this country -- is the predicate for jurisdiction over foreign corporations.[2/] Indeed, a foreign bank which does extensive banking business within this country is nevertheless subject to bankruptcy adjudication solely on the basis of its assets here if its principal place of business is outside the United States./ 11 U.S.C. §11a(1). There is no authority for IBB's contention and we decline to adopt it.

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There is greater appeal in the position of FDIC and Commonwealth that because the term "banking corporations" does not on its face admit of the refinement sought by IBB, no such restriction is permissible except by Congressional amendment.

Reference to the definitional section of the Act is necessary to understand appellant's position. The word "person" is defined in §1(2) of the Act to include corporations; §1(8) defines "corporations" to include:

> "... all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association..."

Thus, the Act allows any corporation including foreign corporations with assets in the United States to file a petition in voluntary bankruptcy except for certain categories of corporations, including banking corporations. The term "banking corporation" has been sensibly construed to include "corporations which were authorized by the laws of their creation to do a banking business." Gamble v. Daniel, 39 F.2d 447, 450 (8th Cir.), appeal dismissed, 281 U.S. 705 (1930). FDIC and Commonwealth argue that a mere reading of §4(a), together with §§1(2) and 1(8) ineluctably lead to the conclusion that a bank such as IBB, authorized under the laws of the United Kingdom to conduct a banking business, squarely falls within the meaning of "banking corporation." According

to appellants, the clarity of the statute precludes the need or justification to search elsewhere for a guide to its effect in the case of foreign banks.

IV.

Legislative History

A. A Note on the Propriety of Consulting Legislative History

Despite the admonition by FDIC and Commonwealth that resort to legislative history is unwarranted, courts have not been chary to consider that history if it illuminates even superficially "clear" statutory language. See, e.g., Lynch v. Overholser, 369 U.S. 705, 710 (1962); United States v. American Trucking Associations, 310 U.S. 534, 543 (1940); Knapp v. McFarland, 462 F.2d 935, 939 (2d Cir. 1972); Giuseppi v. Walling, 144 F.2d 608, 624 (2d Cir. 1944), aff'd sub nom. Gemsco, Inc. v. Walling, 324 U.S. 244 (1945); but see, e.g., Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384, 395-97 (1951) (concurring opinion) (Jackson, J.); Radin, "Statutory Interpretation," 43 Harv. L. Rev. 863 (1930) and Landis, "A Note on 'Statutory Interpretation'," id. at 886. While the words of a statute are of course the primary tool in divining legislative intent, judicial interpretation is not straitjacketed by those words if the legislative history evidences a purpose or objective at odds with a plain reading of the statute.

> "It is said that when the meaning of language is plain we are not to resort to evidence in order to raise

> doubts. That is rather an axiom of experience than a rule of law and does not preclude consideration of persuasive evidence if it exists." Boston Sand & Gravel Co. v. United States, 278 U.S. 41, 48 (1928).

In any event, the debate in this case is largely one of academic interest for a review of the history of §4 reveals, if nothing else, one stark conclusion: Congress has never considered whether foreign banks are to be treated differently than domestic ones.

B. The History of Section 4

1. The Bankruptcy Act of 1898[3/]

Section 4 of the Bankruptcy Act of 1898 (Public Law 171, 55th Congress, 30 Stat. at L. 594, chap. 541), the original predecessor of the present law, provided:

> "Sec. 4. Who May Become Bankrupts.--(a) Any person who owes debts, except a corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt.
>
> (b) Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act. Private bankers, but not national banks or banks incorporated under State or Territorial Laws, may be adjudged involuntary bankrupts."

The act excluded all corporations from becoming voluntary bankrupts. While permitting certain business corporations to be adjudged involuntary bankrupts, the last sentence in §4(b) excluded even from that category "national banks or banks incorporated under State or Territorial Laws."

As originally proposed, §4(b) specifically excluded only "national" banks. As the following exerpts from the legislative history disclose, the reason for the exclusion was the existence of other more effective insolvency laws and procedures. The proponent of the bill in the Senate, Senator William Lindsay, explained:

> "There is a law now in force for the control and regulation of national banks, and it was thought best not to interfere with that law. In certain contingencies the government is responsible for the assets of such banks, and it is but reasonable that it should have entire control of them and of their liquidation in cases of dishonesty or insolvency." 30 Cong. Rec. 602, 55th Cong., 1st Sess. (1897).
>
> * * *
>
> "There is already in existence a satisfactory law for the control and liquidation of national banks. Since the Government is responsible for the bank notes issued by these banks in the event of their failure, there is good reason why it should have control of their liquidation." 30 Cong. Rec. 606, 55th Cong., 1st Sess. (1897).

The House Judiciary Committee Report, House Report No. 65, 55th Cong. 2d Sess. (1897) also noted the existence of other in-

solvency provisions as a reason for excluding national banks:

> "The bill exempts national banks from being proceeded aginst in bankruptcy, for the reason that Congress has legislated especially in respect to them, and the most careful provisions exist for protecting all interests connected by the national banking laws", at 40.

During the debate on the House Floor, Congressman Robert N. Bodine criticized the sweeping scope of §4(b) and predicted problems which would result if publicly regulated corporations other than national banks were not alsc excluded:

> "This bill is the first one of its kind to include corporations at all ... It may be that there is a certain class of corporations that are as appropriately made subject to its provisions as are natural persons [such as those who] engage in any business of the same kind as that usually carried on by individuals. But, this bill goes much further than this. It embraces insurance companies, both fire and life, stock, mutual, assessment, or benevolent; it embraces building and loan associations, trust companies, savings banks, and all other State banks.
>
> Now, in nearly every State in the Union there are chapters on chapters of the statutes regulating to the smallest minutia the proceedings in case of the insolvency of any of those classes of corporations ....
>
> By this bill, at one fell swoop, all the jurisdiction of the several States as to these matters is taken away and vested in the trustee in bankruptcy, and the duties imposed by the State itself upon the officer of the bankrupt court, to be performed, no doubt, at an

> expense many fold greater; and if the experience of the past is any criterion, the creditors, the beneficiaries, or depositors, as the case may be, will receive but a pittance, and the funds to which they are equitably entitled will go into the pockets of the court officials.
>
> Under this bill a trustee in bankruptcy becomes the insurance commissioner, the railroad commissioner, the bank examiner and commissioner and the building and loan commissioner of the several States ... Heretofore the Federal courts have confined themselves principally to carry on the business of the great railroads of the country; but now it is proposed to enlarge their business, to make them vast department stores, in which everything can be bought and every business conducted, from a railroad down to a peanut stand." 31 Cong. Rec. 1939, 55th Cong. 2d Sess. (1898).

Despite Congressman Bodine's fears, the House passed the bill as reported by the House Judiciary Committee. At the request of the Senate, the bill was referred to a Conference Committee, which added the following sentence to §4(b):

> "Private bankers, but not national banks or banks incorporated under State or Territorial Laws, may be adjudged involuntary bankrupts."

No explanation for the additional sentence was given by the Committee except for the unilluminating statement that:

> "The great railroad and transportation companies and banks incorporated under any law are left to be dealt with by the laws of the State creating them. It would lead to much confusion and hardship and many complications should we undertake to subject the great

> railroad and transportation corporations to the provisions of this act. It is believed that they can be better dealt with under other laws." 31 Cong. Rec. 6426 55th Cong., 2d Sess., (1898).

2. Amendments of 1903 and 1910

While Congress amended §4(b) in 1903, the exclusion of "private bankers ..." remained unchanged.[4/]

However, Congress substantially revised §4 in 1910. As amended, the section provided:

> "Sec. 4. Who may become bankrupts.- (a) Any person, except a municipal, railroad, insurance, or banking corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt.
>
> (b) Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any moneyed, business, or commercial corporation, except a municipal, railroad, insurance, or banking corporation, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act.
>
> The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a State or Territory or of the United States." (Public Law 294, 61st Congress, 36 Stat. at L. 838, chap. 412).

Under the 1898 Act, no corporation had been eligible to file a voluntary petition. Under the 1910 Act all corporations, except municipal, railroad, insurance or banking

corporations, were authorized to do so. Section 4(b) in the 1898 version as amended in 1903 had subjected "any corporation engaged principally in manufacturing, trading, printing, publishing, mining, or mercantile pursuits" to involuntary bankruptcy. The 1910 amendment instead allowed "any moneyed, business, or commercial corporation, except a municipal, railroad, insurance, or banking corporation" to be adjudged an involuntary bankrupt. Moreover, the provision of the 1898 Act which had provided that '[p]rivate bankers, but not national banks or banks incorporated under State or Territorial Laws" could be adjudicated involuntary bankrupts was deleted.

According to statements made during the floor debate by Congressman Sherley, sponsor of both amendments to §4, the revision in §4(b) was intended to clarify what types of corporations could be adjudicated involuntary bankrupts by formulating a comprehensive definition with certain exceptions rather than by enumeration, as in the 1898 Act, of the specific categories of corporations subject to involuntary bankruptcy.

At the hearing before the House subcommittee which considered the amendments, Congressman Sherley referred to those corporations which were excluded by §4(b) and stated:

> "There has been excepted out of the law always certain corporations-for instance, municipal, railroad, insurance, or banking corporations-on the theory that all of those corporations partook either of a public or quasi-public nature that

> did not warrant their estates being adjudicated through bankruptcy proceedings, and that it was wiser to hold them exempt from the law than to permit them to be thrown into bankruptcy by either voluntary or involuntary proceedings. This amendment does not, in that particular, change the law at all. Now these particular corporations are exempted. What is here proposed is to permit the voluntary filing of a petition by a corporation." Hearing before Subcommittee No. 1 of the Committee on the Judiciary on H.R. 18694 (bankruptcy), Feb. 3, 1909.

In its report on the proposed 1910 amendments, the House Committee on the Judiciary wrote:

> "The words substituted are taken from the bankruptcy law of 1867, and their meaning has long since been settled by the courts. The reason for exempting the quasi public corporations will be apparent. Banks are excepted from the operation of the law at present. Other business entities having similar responsibilities to the public are now also excepted." House Report 511 (61st Congress, 2d Session) (1910) at 5.

3. The 1932 Amendment [5/]

In 1932 building and loan associations were added to the list of corporations excepted from the provisions for voluntary and involuntary bankruptcy. In recommending the bill to the House, the House Judiciary Committee wrote:

> "The purpose of the bill is to exempt building and loan associations from the operation of the national bankruptcy law. When the national bankruptcy law was drafted it was thought wise to

> exempt from its operation municipal, railroad, insurance, and banking corporations. At that time building and loan associations were not as extensive and through oversight or otherwise these associations were not included in the exemption. Every reason which obtains for exempting the corporations above referred to obtains in so far as building and loan associations are concerned. ... It has been suggested that by reason of the fact that in two States in the Union no law exists controlling bui'ding and loan associations that this might be a reason for not exempting these associations from the operation of the bankruptcy law. It will be remembered that if the bankruptcy law is not invoked in connection with building and loan associations that this in no way interferes with the State equity laws and whether a State has supervisory control over building and loan associations or not those interested may at all times take advantage of State insolvency laws." House Rep. 98 (72nd Congress, 1st Sess. 1932).

V.

The Import of the History

In sum, the exception for "banking corporations" from the benefits of voluntary bankruptcy was first enacted in those words in 1910, but the policy of excluding banks from aspects of the Act was earlier conceived in the 1898 version of §4(b). However, unlike the 1898 statute, which expressly excepted national, state or territorial banks from involuntary bankruptcy, the 1910 amendment eliminated any reference to a bank's place of incorporation. To

prevail, IBB must therefore demonstrate that, despite the change in language, Congress intended the jurisdictional rule of the earlier statute to survive the 1910 revision. IBB relies on two sources to support this construction: the views of members of Congress and the policies underlying the exception as evidenced in legislative history and as construed by courts.

Specifically, IBB relies upon the statements made by Congressman Bodine in 1898 (see supra at pp.10-11) and Congressman Sherley in 1909 (see supra at pp. 13-14) as evidence that (1) Congress exempted only national, state and territorial but not foreign banks from involuntary bankruptcy in 1898; and (2) Congress did not intend the exception to be expanded in 1910 to cover foreign banks. FDIC and Commonwealth object at the outset to giving weight to these statements because the case at hand involves a voluntary petition, and the congressional remarks in question were not addressed to §4(a) which relates to voluntary bankrupts. In addition, they argue that the phrase "national banks and banks incorporated under State or Territorial Laws" in §4(b) of the 1898 Act never modified the exception for "banking corporations" in §4(a) of that statute. FDIC and Commonwealth consequently argue that the history of and reason for the specific reference to national, state and territorial banks in the exceptions to involuntary bankruptcy is only tangentially relevant to the construction

of the banking exception for voluntary bankruptcy.

Although the history outlined above is correctly stated, we disagree with the conclusion that appellants draw from it. The exception in the present Act for "banking corporations" is identical in §§4(a) and (b). Whatever the helpfulness of maxims of construction in general, common sense dictates that the same words used in different parts of the same statutory provision should, absent evidence to the contrary, be accorded the same meaning. See Davies Warehouse Co. v. Bowles, 321 U.S. 144, 149-159 (1944). Therefore, if the exception in §4(b) only covers national, state and territorial banks, that fact is relevant to the determination whether foreign banks are covered under §4(a).

A. Congressman Bodine's Fears

IBB first points to the statement in 1898 of Congressman Bodine advocating the exclusion of "trust companies, savings banks, and all other state banks" from §4(b) to avoid interference with state regulation of these institutions. (see supra at pp. 10-11) IBB argues that Congressman Bodine's comments evidence a concern only that state, as distinct from foreign, banks be excluded from the Act and that he was unconcerned with the question whether foreign banks could be adjudicated involuntary bankrupts. According to IBB, when the Conference Committee added the phrase excluding state or territorial banks to §4(b), it "apparently accepted Congress-

man Bodine's position." (IBB Memorandum at p. 24) IBB concludes from this that Congress did not mean to exclude foreign banks.

We do not draw the same conclusion. For one thing, because the Congressman did not consider foreign banks at all, his statements shed no light on the issue. Moreover, it is not even clear that Congressman Bodine's attitude towards state banks was accepted by Congress as a whole. As Dean Sovern has pointed out in "Section 4 of the Bankruptcy Act: The Excluded Corporations,"

> "... It might be argued that Congress left the insolvency administration of banking and insurance corporations and building and loan associations to state law for the reasons suggested by Mr. Bodine, that '[I]n nearly every State in the Union there are chapters on chapters of the statutes regulating to the smallest minutia the proceedings in case of the insolvency of any of those classes of corporations.' ... The argument suffers badly from the lack of evidence in the history of section 4 that the rest of Congress shared Mr. Bodine's views." 42 Minn. Law 171.180 (1957) (emphasis added).

Moreover, Congressman Bodine was neither the sponsor of the 1898 Act in the House nor a member of the committee which drafted the legislation. There is no reason to view the statement as other than the view of one Congressman.[6/]

B. The Import of Congressman Sherley's Statement

IBB places great emphasis on Congressman Sherley's statement that the 1910 amendment to §4(b) did not "change

the law [regarding excepted corporations] at all" as "crucial evidence" that Congress implicitly deemed the term "banking corporations" to include only national, state or territorial banks. (see supra, pp. 13-14).

However, even assuming that IBB interprets Congressman Sherley's statement correctly to mean that the exception in the 1910 Act was intended to have the identical effect of its 1898 predecessor, this view is beneficial to IBB's position only if the effect of the 1898 exception was itself limited to national, state and territorial banks. Unfortunately, a close analysis of that Act does not produce a clear cut answer.

We start with the language of §4(b) of the 1898 Act which specifies what entities can be adjudicated involuntary bankrupts. Unincorporated companies could be adjudged involuntary bankrupts regardless of the nature of their businesses. However, in the case of corporations, only those "engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits" fell in that category, and of course, even IBB does not suggest that banks are principally engaged in manufacturing, printing or publishing. Although Congress did not define the terms "trading" or "mercantile pursuits," IBB does not contend that banks operate in those fields and, indeed, the decisions in Zugalla v. International Mercantile Agency, 142 F. 927 (3d Cir. 1906),

In re Surety Guarantee & Trust Co., 121 F.73 (7th Cir. 1902), 102 F. 1004 (2d Cir. 1900) and In re New York & W. Water Co., 98 F.711 (S.D.N.Y.) aff'd / are consistent with the view that they did not.[7/] Thus, it is plain that no banking corporation could be adjudged an involuntary bankrupt under the 1898 Act (see Murphy v. Pennimar, 105 Md. 453, 469 (1907)) unless, as IBB argues, the exclusionary language of §4(b) in 1898 leads to a different conclusion.

One is therefore left to grapple as at the outset with the meaning of the last sentence of §4(b) of the 1898 Act:

> "Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts."

If the analysis above as to the inclusionary language in §4(b) is correct, this final sentence is rendered mere surplusage. Interpretations offered by each side as to the reason for its inclusion do not detract from the persuasiveness of this view, for if all banks were outside the scope of the inclusionary language of §4(b), specification of only certain types of banks in the exclusionary language of the section adds nothing to the effect of the statute.

The question ought not be settled on such an uncertain basis, if any firmer ground exists. Moreover, we are loath to decide a case as important as this on whatever conclusions IBB would have us draw from an isolated comment made by a single Congressman, even one who sponsored the bill.[8/]

Furthermore, we note the irony of IBB's position which depends on that portion of §4(b) which specifies who may not be adjudged an involuntary bankrupt in order to demonstrate who may. Such an analysis is especially weak where, as here, so little meaningful history is to be found. IBB argues that non-inclusion in an exclusion results in inclusion. That is, it contends that the failure to include foreign banks in the sentence which excludes national, state and territorial banks results in the determination that foreign banks are among the types of corporations who may be adjudged involuntary bankrupts. But this syllogism runs crashing into the hard, clear language of the coverage clause of §4(b) which simply does not authorize the involuntary bankruptcy of a bank.

The plain fact is that the legislative history offers no clue why Congress inserted the limitation as to national, state and territorial banks, and appellants' suggestion that the phrase is mere surplusage is no more than an educated guess.

In sum, none of the theories urged by either side obviates the fact that there is no indication that Congress, either in 1898 or 1910, considered the effect of the exception as to foreign banks. We therefore proceed to consider the policies underlying the exception to determine whether its application to foreign banks would further or would thwart the objectives of the statute.

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VI.

The Purposes of the Exception

A. Existence of Alternate Regulation

A variety of courts which have considered the exceptions to §4 of the 1910 Act have concluded that Congress excepted railroads, municipal, insurance and banking corporations because of the existence of pervasive state regulations over these activities.

For example, as the court in Woolsey et al v. Security Trust Co., stated:

> "The letter of that section excludes banking and insurance corporations; its spirit and purpose to leave the liquidation of the banking corporations of the country to the well-organized departments of the states and the nation, organized for the purpose of supervising while they are going concerns and of liquidating them when they are not, excludes them. Federal laws provide elaborately for the supervision and liquidation of national banking corporations; the laws of the states do the same for state banks and insurance companies, in order to protect the millions of persons who deal with them on the faith of the protection afforded by direct governmental supervision and control. It was considered that it would be a ruinous thing to the state, to the depositors, and to the creditors to have the elaborate scheme of liquidation which the state provides broken into and nullified by bankruptcy proceedings, and it was intended, by withdrawing jurisdiction over these corporations from the bankruptcy court, that this would not occur. It would be directly contrary to the purposes so definitely and comprehensively expressed, to exempt

> banking corporations from the act, leaving their administration and liquidation to the state and federal systems devised expressly for them, to hold that this bank and trust company is not exempt, chartered though it was under the state banking laws, with banking privileges and powers, operated though it was under those laws, and now being liquidated, as it is, under them."
> 74 F.2d 334, 337 (5th Cir. 1934). (Emphasis added).

Although the Court of Appeals for this Circuit admitted in Union Guaranty & Mortgage Co. v. Van Schaick, Supt. of Ins., 75 F.2d 984 (2d Cir. 1935) that "The purpose of the exception is not self evident; we must infer it as best we can from such similarity as exists between the excepted groups," it nevertheless observed that:

> "The most natural inference is that Congress meant to leave to local winding up statutes the liquidation of such companies; that is, since the states commonly kept supervision over them during their lives, it was reasonable that they should take charge of them on their demise."
> Id.

And in In re Island Mortgaging Corp., 18 F.Supp. 448, 449 (E.D.N.Y. 1937), the court remarked:

> "Congress has seen fit to exclude from the operation of the Bankruptcy Act certain types of corporations which, because of their quasi public nature, were assumed to belong wholly under state supervision and control."

As recently as April of this year, the district court in In re Equity Funding Corp. of America considered the excep-

tion for insurance companies and analyzed the Congressional purpose in excluding insurance companies in terms logically applicable to banking corporations:

> "Congress in enacting Section 4 decided that liquidation of insurance companies should be left to the states. In Re Union Guarantee & Mortgage Co., 75 F.2d 984 (2d Cir. 1935); In Re Superior Lodge of the Masons Annuity, 286 F.180, 184 (N.D. Ga. 1923). Since the reorganization of an insurance company or its adjudication as a bankrupt under the Act would preempt state liquidation proceedings for that company, Congress enacted Section 4 to preserve the exclusive jurisdiction of the states over the liquidation of insurance companies and to prevent the reorganization of insurance companies or their adjudication as bankrupts. See Woolsey v. Security Trust Co., 74 F.2d 334, 337 (5th Cir. 1934).
>
> By preserving state liquidation proceedings, Congress sought to prevent bankruptcy or reorganization courts from interfering with comprehensive state insurance regulations and with the rights of insured protected by such regulations. See In Re Union Guarantee & Mortgage Co., supra; In re Superior Lodge of the Masons Annuity, supra. As the language of Section 4 suggests, Congress determined that interference with state insurance regulations would not occur as long as bankruptcy courts did not reorganize insurance companies or adjudge them to be bankrupts." ___F. Supp. ___, Slip Op. at 16-17 (C.D. Calif. April 11, 1975).

See, in general, C. Seligson and L. King, "Jurisdiction and Venue in Bankruptcy",[36] Journal of the National Assoc. of Referees in Bankruptcy, 38.

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Comments by Congressman Bodine (see supra, at pp. 10-11) and other legislators during debate on the 1898 Act support the view that Congress considered the existence of alternative regulatory mechanisms a reason for excluding national, if not state and territorial banks. See, e.g., 30 Cong. Rec. 606 (1897). However, as Dean Sovern has noted, while "[t]here is slight support in the deliberation preceding the passage of the Act of 1898, and in the debate preceding the exemption of building and loan associations [for the theory that Congress excepted the corporation because of alternate state regulation]", there is

> "[H]ardly enough to sustain the proposition that Congress excluded banks, insurance corporations and building and loan associations primarily because they were so extensively regulated by the states. The argument suffers, too, from Congress' failure to exclude all closely regulated enterprises from bankruptcy." 42 Minn. L. Rev. supra at p. 180.

Moreover, if a desire to bequeath the regulation of banks to the states was one of Congress' objectives. the statutory scheme did not consistently achieve that result because in 1898 not every state or territory had enacted laws for the control and liquidation of banks. (E.g., Texas, see Gen. L. Tex. 1st Sess. Ch. 10 (1905); Washington, see Washington Code Ann. Title 41 (1912)). Indeed, some courts held that the absence of a state regulatory mechanism was irrelevant. For example, in In re Oregon Trust & Savings Bank, the court noted:

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> "Under the statutes of the state of Oregon provisions are made for forming corporations, and by virtue of such laws, therefore, corporations might be and are frequently formed for carrying on a banking business. The organization of banks, therefore, comes within the purview of the statutes, and it does not seem to me that it makes any difference as to the effect of the law that no particular laws were made until recently for the regulation of banks organized under the laws of the state. The banks are, nevertheless, organized for the purpose of carrying on a banking business, and hence such corporations come within the intendment of that clause of the bankruptcy act which has been heretofore alluded to, and therefore are not subject to be adjudged involuntary bankrupts." 156 F. 319, 320 (D. Ore. 1907). (emphasis added).

Further support for the view that Congress did not regard alternative regulation as the raison d'etre for the exceptions is found in the language of the House Report on the 1932 amendment which added building and loan associations to the list of excepted corporations:

> "This legislation is sponsored by the United States Building and Loan League, and so far as the committee has been able to ascertain no one connected with building and loan associations opposes this legislation. However, it has been suggested that by reason of the fact that in two States in the Union no law exists controlling building and loan associations that this might be a reason for not exempting these associations from the operation of the bankruptcy law. It will be remembered that if the bankruptcy law is not invoked in connection with building and loan associations that this is no way interferes with the

> State equity laws and whether a State has supervisory control over building and loan associations or not those interested may at all times take advantage of state insolvency laws." (House Report 98, 72d Cong., 1st Sess. 1932)

If state regulation was indeed the motivation behind the banking corporation exception, then Congress was inconsistent in permitting private bankers to be adjudicated involuntary bankrupts in 1898, since allowing such an adjudication did in fact interfere with state regulation. In In re Salmon & Salmon, 143 F. 395 (W.D. Mo. 1906) the court refused to give effect to state laws governing the winding up of a private bank owned by a partnership on the grounds that the operation of the state statute was preempted by the Bankruptcy Act. See also In re Faour, 72 F.2d 719 (2d Cir.), cert. denied, 293 U.S. 613 (1934); In re Bajardi, 9 F.2d 797 (2d Cir.), cert. denied 270 U.S. 651 (1926); accord, State of Missouri v. Angle, 236 F.644 (8th Cir. 1916).[9/]

Furthermore, if Congress intended to exclude from bankruptcy adjudication certain companies for which there was already an extensive regulatory scheme for liquidation, the liquidation laws and banking laws of foreign countries such as the United Kingdom could serve that objective as easily as state schemes.

In any event, appellants argue that New York[10/] has enacted ample statutory provisions to cover bankrupts such as IBB. They point out that foreign banks doing business in

New York are subject to the regulations of state authorities. E.g., N.Y. Banking Law §§200 et seq. If these banks become insolvent, liquidation proceedings may be pursued and a state official may acquire possession of the bank's business for the protection of creditors. E.g., N.Y. Banking Law §§605 et seq. IBB responds that these statutes are ineffective as to it because it never carried on banking business here. In such a situation, formal liquidation proceedings may not be authorized by statute, but New York Business Corporation Law §1202(4) provides that a receiver of the property of the corporation can be appointed by the court in the following situation, which presumably applies to IBB:[11/]

> "An action to preserve the assets in this state, of any kind, tangible or intangible, of a foreign corporation, which has been dissolved, nationalized or its authority or existence otherwise terminated or cancelled in the jurisdiction of its incorporation or which has ceased to do business, brought by any creditor or shareholder of such corporation or by one on whose behalf an order of attachment against the property of such corporation has been issued."

B. Other Objectives Underlying the Banking Exception

Purposes other than that of alternative state regulation have been suggested as prompting the enactment of the banking corporation exception. In holding that a fraternal organization was not subject to the Act as an insurance corporation, the court in In re Supreme Lodge of the Mason's Annuity stated that while "No reasons for making these

exceptions [for municipal, railroad, insurance or banking corporations] were assigned by the committees of Congress," three reasons other than that of alternate state regulation "might be surmised":

> (1) "the public or quasi public nature of the business, involving other interests than those of creditors";
>
> (2) "the desirability of unarrested operation"; and
>
> (3) "the inappropriateness of the bankruptcy machinery to their affairs." 286 F.180, 184 (N. Ga. 1934).

Remarks by Congressman Sherley and statements in the 1910 House Judiciary Report (supra at p. 14) support the theory that the quasi-public nature of the exceptions was a common basis of their enactment. As the Second Circuit has noted:

> "All except municipalities are companies for profit whose businesses are now generally regarded as 'affected with a public interest'; that is to say, as touching enough persons who must deal with them at some economic disadvantage, to require public supervision and control." Union Guaranty & Mtge Co. v. Van Schaick, supra, 75 F. at 984.

Accord, In re Island Mortgaging Corp., supra; In re National Mortgage Corporation, 17 F.Supp. 54, 55 (D. N.J. 1935); In re Prudence Co., Inc., 10 F.Supp. 33, 39 (E.D.N.Y.) aff'd, 79 F.2d 77 (2d Cir.), cert. denied sub nom. Egbert v. Callaghan, 296 U.S. 646 (1935); see In re Equity Funding Corp. of America, supra; Columbia Ry. Gas & Elec. Co. v. South Carolina, 27 F.2d 52, 55 (4th Cir. 1928).

It is true that in the case of each type of excluded corporation, Congress might well have determined, first, that social and economic interests deserved greater consideration than the interest of equality of distribution among creditors that the Bankruptcy Act in general seeks to achieve; and second, that regulation by states was more appropriate. But if Congress understood the importance of maintaining confidence and stability in the banking system, that concern does not logically demand the creation of a distinction between domestic and foreign banks, given the existence of alternate schemes of regulation of foreign banks by other countries such as here, the United Kingdom.

Turning to the next suggested objective -- the desirability of unarrested operation in order to maintain confidence in the institution and in the economy in general -- it is logical that Congress might have desired to avoid closing a major bank upon its becoming insolvent if there was any practical way to transfer the banking business of that corporation to a solvent corporation without cessation of operation. The recent memory of the bankruptcy of Franklin National Bank is testimony that such a consideration is of continuing importance. However, no reason suggests itself why the same consideration would not be of equal significance in the case of a foreign bank with assets, creditors or depositors here.

As to the last purpose enumerated by the court in In re Supreme Lodge, that is, that the bankruptcy machinery is

inappropriate to winding up the affairs of a bank, the argument applies with equal force both to domestic and foreign banks. Moreover, if the process of bankruptcy under the Act is ill suited for winding up of the affairs of a bank with a large number of creditors, neither in 1898 nor in 1910 did Congress view this problem as a stumbling block in the case of private banks, which might have as many creditors as corporate banks, but which could nevertheless be adjudged involuntary bankrupts in 1898.

We conclude that there is nothing inherent in the probable objectives of Congress which requires or suggests that the exclusion of "banking corporations" from the coverage of the Act should apply to domestic but not foreign banks.[12/]

VII.

Equitable Considerations

IBB argues that in view of Congress' failure to give the slightest consideration to foreign banks and the dearth of authority to support the position of either side, §4 should be construed to achieve the "equitable" objectives of the Bankruptcy Act, that is the generally equal distribution of assets among creditors. As stated earlier, both Franklin, FDIC's predecessor in interest, and Commonwealth filed liens within four months of IBB's petition. If the bankruptcy court has jurisdiction, the liens may be invalidated. To recognize the priority of FDIC and Commonwealth IBB argues,

would give them an advantage over foreign creditors in derogation of Congress' intention to ensure generally equal distribution among creditors.[13/]

We agree with FDIC and Commonwealth that this argument presupposes jurisdiction under the Act and is of no relevance to the initial determination whether jurisdiction exists. The purpose of enacting the exceptions in §4 was not to achieve equality of distribution, but to avoid application of the bankruptcy laws to what Congress viewed as inappropriate situations.

VIII.

Conclusion

Despite the variegated mechanisms available to interpret legislation, "the final rendering of the meaning of a statute is an act of judgment."[14/] Where scrutiny of the legislative history unearths no clue that Congress has considered application of the statute to the particular facts at hand and where adherence to the statutory words themselves does not frustrate the general objectives of the legislation, the words must be given effect as they read. Here the words of the statute read:

> "(a) Any person, except a municipal, railroad, insurance, or banking corporation or a building and loan association, shall be entitled to the benefits of this title as a voluntary bankrupt,"

must in the circumstances be taken to mean what they say:

that foreign banking corporations are precluded from seeking adjudication as voluntary bankrupts.

In reaching this conclusion we make no attempt to pronounce what Congress' action might have been had it ever considered whether foreign banks should be accorded the right to file voluntary petitions. To do so would be to rush in where angels fear to tread. As Justice Frankfurter wisely advised:

> "To explain the cause of non-action by Congress when Congress itself sheds no light is to venture into speculative unrealities ... Various considerations of parliamentary tactics and strategy might be suggested for the inaction of ... Congress, but they would only be sufficient to indicate that we walk on quicksand when we try to find in the absence of corrective legislation a controlling legal principale." Helvering v. Hallock, 309 U.S. 119, 121 (1940).

The decision of the Bankruptcy Court is reversed. The petition of Israel British Bank is dismissed.

It is so ordered.

Dated: New York, New York
October 10, 1975.

MORRIS E. LASKER
U.S.D.J.

Opinion No. 43241 of Honorable Morris E. Lasker, United States District Judge dated October 10, 1975

FOOTNOTES

1. An amended petition, dated October 1, 1974, was filed on October 10, 1974. The parties have stipulated that this appeal be deemed addressed to the amended, as well as original, petition.

2. The dispute as to whether §2(a)(1) is a jurisdictional or venue statute (see, e.g., Bass v. Hutchins, 417 F.2d 692 (5th Cir. 1969); In re Eatherton, 271 F.2d 199 (8th Cir. 1959)) is irrelevant to the issue at hand because the predicate of jurisdiction, if any, in this case is §4.

3. The history of §4 prior to 1898 may be summarized briefly. Under the Act of 1800 (which was repealed in 1803 (2 Stat. 248)) bankers resident within the United States could be adjudicated involuntary bankrupts, §1 (2 Stat. 19). The Act made no provision for voluntary bankruptcy. The next bankruptcy act which was passed in 1841 and repealed two years later, provided in §1 that resident banks could be adjudged both voluntary and involuntary bankrupts. The most immediate predecessor to the 1898 Act was the Bankruptcy Act of 1867, which also provided that resident banks and bankers, whether incorporated or not, were subject to both voluntary and involuntary adjudication. §§3, 9, 11. The Act was repealed in 1878.

4. Section 4(b) as amended in 1903 (Public Law 62, 57th Congress, 32 Stat. L. 797, Chap. 487) provided:

> "(b) Any natural person, except a wage-earner, or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, [mining] or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act. Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts.

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> [The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a State or Territory or of the United States.]" (Additions made by 1903 amendment in brackets).

5. Congress revised the Bankruptcy Act in 1938 and, at that time made certain changes in §4(b), but none of them were addressed to the "banking corporation" exception.

6. The Supreme Court and commentators have suggested that expressions in debate by individual legislators (other than the member in charge of the bill) should be disregarded. See United States v. Trans-Missouri Freight Ass'n, 166 U.S. 290, 318 (1897); Ten Broock, "Admissibility of Congressional Debates in Statutory Construction by the United States Supreme Court," 25 Calif. L. Rev. 326 (1937). Even if the rule is more honored in the breach, the caution it counsels is wise.

7. See also In re New York Building-Loan Banking Co., 127 F. 471 (S.D.N.Y. 1904) where the court held that because the debtor did not fit within the enumerated classes of included corporations it was not subject to the Act, and stated:

> "The authorities under the present act seem decisive. They hold, in substance, that the intention of the present bankrupt act, the provisions of which are much more restrictive than those of the earlier bankrupt acts, was to exclude from the operation of the act banks, railroad, telegraph and express companies, and all corporations except those mentioned in the act. By the provisions of the present act the corporations which can be put into involuntary bankruptcy are those 'engaged principally in manufacturing, trading, printing, publishing, mining, or mercantile pursuits.' These terms are to be taken in their natural and usual meaning, and any corporation which does not come within such meaning cannot be put into bankruptcy. I think that an ordinary building and loan association is not a corporation which is included in the provision quoted." 127 Fed. at 471-72.

8. Unlike Congressman Bodine in 1898, Congressman Sherley was the sponsor of the 1910 bill in the House and his statements should not "be dismissed out of hand" as ones reflecting only his view. United States v. Enmons, 410 U.S. 396, 405 n. 14 (1973). However, the teaching of Justice Frankfurter that judges "not delve into the mind of legislators or their draftsmen, or committee members" is nevertheless apt. Frankfurter, "Some Reflections on the Reordering of Statutes." Col. L. Rev. 527, 539 (1947).

9. There was a similar interference with state regulatory schemes in the insurance area prior to the 193[illegible] deletion of "any unincorporated company" from Section 4b. See In re Minnesota Insurance Underwriters, 36 F.2d 371 (D. Minn. 1929); Republic Underwriters v. Ford, 100 F.2d 511 (5th Cir. 1938).

10. Appellants did not cite the statutes of other states although they contend that the liquidation of IBB would be supervised by the laws of other states as well.

11. Section 1202(4) of the Business Corporation Law and its predecessor have been applied to foreign banks with assets in New York. See, e.g., Stephen v. Zivnostenka Banks, 155 N.Y.S. 2d 340 (1956), aff'd 2 A.D. 2d 958, 157 N.Y.S. 2d 903, aff'd, 2 A.D. 2d 958, 157 N.Y.S. 2d 904, aff'd, 3 N.Y.2d 862, 166 N.Y.S. 2d 309 (1957), appeal dismissed, 356 U.S. 22 (foreign bank had been nationalized); Augstein v. Banska A. Hutui Akciova Spolecnost, 124 N.Y.S. 2d 446, modified on other grounds, 282 App. Div. 929, 125 N.Y.S. 2d 647 (1953); (foreign bank had been nationalized).

12. Nor do we find any basis for distinguishing between banking corporations which are actively engaged in banking and those which are not. Even if it may be argued that the objectives of deferring to state regulation, or maintaining the continuity of operations of a bank are more clearly applicable to corporations actively engaged as banks than those which are not, the Act simply makes no such distinction as to domestic banks.

Perhaps all that a sustained effort to find the "meaning" of the statutory language at hand proves is that, as one astute observer has commented:

> "... overemphasis on legislative guides may lead to a distorted view of the statutory purpose no less than literalism,

> for much less thought is spent on the future implications of committee reports and explanations on the floor than in choosing the words of a statute..." A. Cox, "Judge Learned Hand and The Interpretation of Statutes," 60 Harv. L. Rev. 370, 381 (1947).

13. See Disconto Gesellschaft v. Umbrecht, 208 U.S. 570, 582 (1908) in which the Supreme Court noted "... the well recognized rule between states and nations which permits a country to first protect the rights of its citizens in local property before permitting it to be taken out of the jurisdiction for administration in favor of those residing beyond its borders."

14. Frankfurter, "Some Reflections on the Reading of Statutes," supra, 30 Harv. L. Rev. at 531.

Amended Opinion No. 43241 of Honorable Morris E. Lasker, United States District Judge dated October 15, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

In the Matter

of 74 Bkcy. 1322

ISRAEL-BRITISH BANK (LONDON)
LIMITED,

Bankrupt.
----------X

CORRECTING MEMORANDUM

LASKER, D.J.

It has been brought to my attention since the filing of my Opinion in this case on October 10, 1975, that the first line on page 2, should read "denied Franklin's and Commonwealth's motions to dismiss" instead of "denied Franklin's motion to dismiss."

The first line on page 2 of the Opinion filed October 10, 1975, is, therefore, amended to read as follows:

> "of the Bankruptcy Court which denied Franklin's and Commonwealth's motions to dismiss."

It is so ordered.

Dated: New York, New York
October 15, 1975.

MORRIS E. LASKER
U.S.D.J.

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